

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION**

JAMES E. NULL AND MILDRED NULL
C/O HON. JAMES K. MURPHY
LYNCH, COX, GILMAN & MAHAN, PSC
500 W. JEFFERSON ST., STE. 2100
LOUISVILLE, KY 40202

PLAINTIFFS

V.

AMERIQUEST MORTGAGE COMPANY
1100 TOWN & COUNTRY ROAD
11TH FLOOR LEGAL DEPARTMENT
ORANGE, CA 92868

AND

NATIONS TITLE AGENCY OF INDIANA, INC.
C/O NATIONS TITLE AGENCY OF INDIANA, INC.
3939 PRIORITY WAY SOUTH DRIVE, SUITE 210
INDIANAPOLIS, IN 46240

CASE NO. 3:08-CV-47

AND

JON CLARK
C/O HON. NICHOLAS K. HAYNES
O'KOON HINTERMEISTER, PLLC
500 W. JEFFERSON ST., STE. 1100
LOUISVILLE, KY 40202

DEFENDANTS

**DEFENDANT'S MOTION TO DISMISS—
LACK OF SUBJECT MATTER JURISDICTION**

Now comes **Defendant, Jon Clark**, and hereby moves the Court to dismiss Plaintiffs' claim for lack of subject matter jurisdiction. Pursuant to Fed. R. Civ. P. 12 (b) (1) and (h) (1), and 28 U.S.C. § 1332 (a) (1), Plaintiffs' Complaint should be dismissed as complete diversity

does not exist and Plaintiffs explicitly relies on Diversity of Citizenship as their basis for Jurisdiction. These arguments are further developed in the memorandum below.

Respectfully submitted,

/s/ Nicholas K. Haynes
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Counsel for Jon Clark

FACTUAL BACKGROUND

Plaintiffs, James E. and Mildred Null (Nulls), filed a Complaint against Defendants, Ameriquest Mortgage Co. (Ameriquest), Nations Title Agency if Indiana, Inc. (Nations), and Jon Clark (Clark). Defendant, Clark now brings this Motion to Dismiss for Lack of Subject Matter Jurisdiction.

“...Plaintiff[s] James E. and Mildred Null...are residents of the Commonwealth of Kentucky. Compl. at ¶ 6. Ameriquest is incorporated in Delaware with a principal place of business in Orange, California. Id. at ¶ 7. Nations is incorporated in Indiana with a principal place of business in Indianapolis, Indiana. Id. at ¶ 8. Clark is an individual resident of the State of Kentucky. Id. at ¶ 9. The Nulls and Clark are both residents of the Commonwealth of Kentucky. Plaintiffs state that their jurisdiction is proper pursuant to 28 U.S.C. § 1332—diversity jurisdiction. Id. at ¶ 10.

MEMORANDUM OF SUPPORT

Fed. R. Civ. P. 12 (h) (1) states that, “If the court determines at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.” Fed. R. Civ. P. 12 (b) (1) allows “a party [to] assert [this defense] by motion,” outside of a responsive pleading.

28 U.S.C. § 1332 (a) (1) sets original jurisdiction in the district court for “all civil actions where the matter in controversy exceeds the sum or value of \$75,000, exclusive of interest and costs, and is between...*citizens of different States*.” (emphasis added). “This statute and its predecessors have consistently been held to require *complete* diversity of citizenship.” Owens Equipment & Erection Co. v. Kroger, 437 U.S. 365, 373 (1978)(citing Strawbridge v. Curtiss, 7 U.S. (3 Cranch) 267 (1806))(emphasis added). As the Owens court noted:

[D]iversity jurisdiction does not exist unless each defendant is a citizen of a different State from each plaintiff. Over the years Congress has repeatedly re-enacted or amended the statute conferring diversity jurisdiction, leaving intact this rule of complete diversity. Whatever may have been the original purposes of diversity-of-citizenship jurisdiction, this subsequent history clearly demonstrates a congressional mandate that diversity jurisdiction is not to be available when any plaintiff is a citizen of the same State as any defendant. Owens at 373.

Where a plaintiff, student residing in Ohio brought a civil action against a for-profit college incorporated in Delaware and operating in Akron, Ohio and its management company also incorporated in Delaware but headquartered in Pittsburgh, Pennsylvania the court found a lack of complete diversity as plaintiff “shares an Ohio citizenship with the defendant.” See King v. Brown-Mackie College, 2007 WL 2286302 at *3 (N.D.Ohio August 06, 2007). The courts

ruling: “[A]ll claims premised on diversity jurisdiction,” where no such jurisdiction exists, “must be dismissed.” Id.

The Nulls explicitly state that, “Jurisdiction is proper pursuant to 28 U.S.C. § 1332...because Plaintiffs and Defendants are residents and citizens of different states...” Compl. at ¶ 10. The Nulls claim of subject matter jurisdiction is unambiguously and solely based on the amount in controversy and complete diversity. However, the Nulls note that they are “residents of the Commonwealth of Kentucky,” Id. at ¶ 6, and that Clark “is...an individual resident of the State of Kentucky.” Id. at ¶ 9. Defendant does not deny either of these assertions. Akin to the court’s finding in King, Plaintiffs “shares [a Kentucky] citizenship with the Defendant,” so “complete diversity is lacking. Consequently, [the Court] does not have subject matter jurisdiction over this action” and the Complaint should be dismissed. 2007 WL 2286302 at *3 (N.D.Ohio August 06, 2007).

WHEREFORE, Defendant, Jon Clark, motions the Court to dismiss, with cause, Plaintiff’s Complaint for lack of Subject Matter Jurisdiction.

Respectfully submitted,

/s/ Nicholas K. Haynes
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Fax: (502) 581-1821
Counsel for Jon Clark

CERTIFICATE OF SERVICE

It is hereby certified that on this day, the 12th day of February, 2008 a copy of the foregoing instrument was mailed to the following:

AMERIQUEST MORTGAGE CO.
1100 TOWN & COUNTRY ROAD
11th FLOOR LEGAL DEPARTMENT
ORANGE, CA 92868

NATIONS TITLE AGENCY OF INDIANA, INC.
C/O NATIONS TITLE AGENCY OF INDIANA, INC.
3939 PRIORITY WAY SOUTH DRIVE, SUITE 210
INDIANAPOLIS, IN 46240

/s/ Nicholas K. Haynes
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Counsel for Jon Clark

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500 W. JEFFERSON ST., STE. 2100)	
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NATIONS TITLE AGENCY OF INDIANA, INC.)	
C/O NATIONS TITLE AGENCY OF INDIANA, INC.)	CASE NO. 3:08-CV-47-H
3939 PRIORITY WAY SOUTH DRIVE, SUITE 210)	
INDIANAPOLIS, IN 46240)	
)	
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JON CLARK)	
C/O HON. NICHOLAS K. HAYNES)	
O'KOON HINTERMEISTER, PLLC)	
500 W. JEFFERSON ST., STE. 1100)	
LOUISVILLE, KY 40202)	
)	
DEFENDANTS)	
)	

ORDER DISMISSING COMPLAINT

Motion having been made, the Parties having been heard, and the Court being sufficiently advised;

IT IS HEREBY ORDERED that Plaintiffs' Complaint be DISMISSED for Lack of Subject Matter Jurisdiction. Specifically, Pursuant to Fed. R. Civ. P. 12 (b) (1) and (h) (1), and

28 U.S.C. § 1332 (a) (1), Plaintiffs' Complaint fails to support Complete Diversity of
Citizenship, which Plaintiffs' explicitly rely on as the basis for proper jurisdiction.

Entered this ____ day of _____, 2008.

HON. JOHN G. HEYBURN, II

Tendered by:

/s/ Nicholas K. Haynes
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HON. MARVIN R. O'KOON
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Counsel for Jon Clark

Distribution:

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___ Hon. James K. Murphy, counsel for Nulls
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1100 Town & Country Rd.
11th Flr., Legal Dept.
Orange, CA 92868
___ Nations Title Agency of Kentucky, Inc.
c/o Nations Title Agency of Indiana, Inc
3939 Priority Way South Dr., Suite 210
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